## APPENDIX A

## TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

No. DC-88

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

DENNIS JUREN, RESPONDENT-APPELLANT

---

No. DC-89

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

EDWARD W. CROMEY, RESPONDENT-APPELLANT

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Appeals from the United States District Court for the District of Columbia

(Miscellaneous Nos. 82-0015 and 82-0016)

(Argued: August 18, 1982 Decided: September 9, 1982)

ROBERT E. MONTGOMERY, JR., Paul, Weiss, Rifkind, Wharton & Garrison, Washington, D.C., with whom Ray J. Batla, Jr., Mary Anne Sullivan, and Kevin I. MacKenzie, Hogan & Hartson, Washington, D.C., were on the brief, for Respondent-Appellant Dennis Juren.

WILLIAM E. NELSON, Nelson, Freed & Nelson, Washington, D.C., with whom Gerald D. Freed and Sherlee S. Nelson of the same firm were on the brief, for Respondent-Appellant Edward W. Cromey.

JUNE WAGONER, Department of Justice, Washington, D.C., with whom R. John Seibert of the same agency,

David L. Anderson, Economic Regulatory Administration, Washington, D.C., and David A. Engels, Department of Energy, Washington, D.C., were on the brief, for Petitioner-Appellee.

Before WRIGHT, Chief Judge, and HOFFMAN and MAXWELL, Judges.

PER CURIAM:

Appellants challenge a judgment of the District Court, Judge Gesell, requiring compliance with subpoenas requested by the Department of Energy (DOE) and denying limited discovery on the issue of the propriety of the subpoenas. Because appellants have presented no evidence that DOE acted improperly, we affirm.

DOE has broad authority to issue subpoenas *ad testificandum* under Section 206 of the Economic Stabilization Act of 1970, 12 U.S.C. § 1904 note (1976), *as amended*, incorporated by Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 754(a)(1) (1976), *as amended;* Section 13(e)(1) of the Federal Energy Administration Act of 1974, 15 U.S.C. § 772(e) (1976); Section 645 of the Department of Energy Organization Act, 42 U.S.C. § 7255 (Supp. IV 1980); and 10 C.F.R. §§ 205.8 and 205.201 (1982). The agency can have these subpoenas enforced by a District Court upon an initial showing that the information sought will advance a civil, as distinguished from a criminal, investigation. *United States v. LaSalle Nat'l Bank*, 437 U.S. 298 (1978).

Judge Gesell, and then Judge Flannery on rehearing, found that DOE had met this burden of proof by presenting two affidavits from Government counsel representing that DOE had made no determination to refer the case for criminal investigation. Appellants presented no evidence challenging the accuracy of the statements made in the affidavits. Thus both judges found that appellants had failed to meet the heavy burden of showing the ex-

treme circumstances that would justify further inquiry into the propriety of the subpoenas, *see SEC v. Dresser Industries, Inc.*, 628 F.2d 1368 (D.C. Cir.) (*en banc*), *cert. denied*, 449 U.S. 993 (1980), and so denied the motion for limited discovery.

Judge Gesell and Judge Flannery properly denied these efforts to delay enforcement of the subpoenas. Mere declarations that a subpoena was issued for an improper purpose fall short of the substantial showing respondents must make to justify discovery. *See id.; United States v. Tesoro Petroleum Corp.*, 503 F.Supp. 868, 873 (D. D.C. 1980). Unsupported allegations of bad faith and improper purpose are often made against regulatory agencies to hinder administrative investigations. Here, the unsupported allegations impugn the integrity of Government counsel. Such attempts to undermine the enforcement process should not be tolerated; allegations of bad faith and improper purpose must be buttressed with specific facts. Since appellants offer none, the order of the District Court is

AFFIRMED.*

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* Since these two cases were essentially identical with regard to their facts and the controlling law, they were consolidated for argument and decision.

## APPENDIX B

## UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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September Term, 1981

No. 81-1271

UNITED STATES OF AMERICA, APPELLEE

v.

ANDREW E. HILL and J.E. PINKERTON, APPELLANTS

---

No. 82-1204

UNITED STATES OF AMERICA, APPELLEE

v.

DENNIS JUREN, APPELLANT

---

No. 82-1205

UNITED STATES OF AMERICA, APPELLEE

v.

EDWARD W. CROMEY, APPELLANT

[Filed Jul. 13, 1982]

Appeals from the United States District Court for the District of Columbia

(Misc. Nos. 81-197, 82-15 and 82-16).

Before WALD and EDWARDS, *Circuit Judges*, and WILLIAM J. JAMESON, *United States Senior District Judge* for the District of Montana.*

ORDER

These causes came to be heard on appeal from orders of the District Court enforcing investigatory subpoenas issued by the Department of Energy ("DOE"). The court has fully considered the briefs and oral arguments presented by the parties. There is no need for a full opinion. *See* D.C. CIR. R. 13(c).

Each of these cases stems from the investigation by DOE of industry compliance in 1976 and 1977 with DOE Mandatory Petroleum Price and Allocation Regulations. 10 C.F.R. pts. 205, 210-212. In three separate actions, the District Court ordered the enforcement of subpoenas *ad testificandum* directed to the respondents-appellants. *United States v. Hill*, 525 F. Supp. 621 (D.D.C. 1981); *United States v. Juren*, Misc. No. 82-15 (D.D.C. Feb. 17, 1982); *United States v. Cromey*, Misc. No. 82-16 (D.D.C. Feb. 17, 1982). The appellants raise both jurisdictional and substantive challenges to the District Court orders enforcing the subpoenas.

The most serious of the appellants' challenges to the District Court orders is their argument that the District Court lacked subject matter jurisdiction to enforce the subpoenas under section 645 of the Department of Energy Organization Act ("DOEOA"), 42 U.S.C. § 7255 (Supp. IV 1980). Appellants note that while section 645 of the DOEOA declares that the Secretary of Energy shall have the same subpoena powers as the Federal Trade Commission possesses under section 9 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 49 (1976), section 645 of the DOEOA makes no explicit

* Sitting by designation pursuant to 28 U.S.C. § 294(d) (Supp. IV 1980).

reference to the subpoena enforcement powers of the district courts. Thus, according to appellants, section 645 is a grant of agency power to issue subpoenas, but not a grant of judicial power to enforce the subpoenas so issued.

If we were writing on a clean slate, appellants' plain language argument might well be persuasive. That, however, is not the case. Congress has granted agencies subpoena powers by reference to section 9 of the FTC Act on numerous occasions. In some cases Congress has explicitly incorporated both the agency authority to issue subpoenas and the judicial authority to enforce subpoenas from section 9 of the FTC Act. *See* 7 U.S.C. § 2146(c) (1976); 21 U.S.C. §§ 467d, 677, 1051 (1976). On other occasions, Congress has referred only to the subpoena issuance authority of the administrative agency. *See, e.g.*, 7 U.S.C. §§ 222, 610(h), 2046 (1976); 29 U.S.C. §§ 209, 521(b) (1976); 33 U.S.C. § 944(d) (1976). Despite these differences in language, the courts have consistently interpreted a reference to section 9 of the FTC Act as incorporating both the grant of agency power to issue subpoenas and the grant of district court jurisdiction to enforce subpoenas. *See e.g., Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 199-200 & n.24 (1946) (interpreting 29 U.S.C. § 209); *General Tobacco & Grocery Co. v. Fleming*, 125 F.2d 596, 598 (6th Cir. 1942) (same); *Cudahy Packing Co. v. United States*, 15 F.2d 133, 134-35 (7th Cir. 1926) (interpreting predecessor to 7 U.S.C. § 222); *Wirtz v. National Maritime Union*, 57 Lab. Cas. (CCH) ¶ 12,651 (S.D.N.Y. 1968) (by implication) (interpreting 29 U.S.C. § 521 (a)); *Fleming v. Easton Publishing Co.*, 38 F. Supp. 677, 679 (E.D. Pa. 1941) (interpreting 29 U.S.C. § 209). Appellants, while noting the different language in the various references to section 9 of the FTC Act, have not pointed to a single case holding that the differences have any effect on the subject matter jurisdiction of the district courts.

In addition, this court has, at least implicitly, assumed the existence of subject matter jurisdiction to enforce subpoenas under section 645 of the DOEOA. In *United States v. Exxon Corp.*, 628 F.2d 70 (D.C. Cir.), *cert. denied*, 446 U.S. 964 (1980), without discussing subject matter jurisdiction, we affirmed a district court order enforcing a DOE subpoena solely on the basis of section 645.

Moreover, the Government points out that section 645 is the only provision in the DOEOA which is capable of an interpretation granting enforcement jurisdiction over subpoenas issued pursuant to any DOE function which was created in that Act and not merely transferred from a previous agency to DOE. *See* S. REP. No. 164, 95th Cong., 1st Sess. 50 (1977). If section 645 were given the limited reading suggested by appellants, it is therefore possible that some subpoenas issued by DOE would be unenforceable.[1] We do not believe that Congress intended to give DOE subpoena power that is incapable of enforcement. Nor did Congress have reason to believe, based on previous judicial interpretations of similar statutory sections, that the language it employed in section 645 might lead to that result. We therefore affirm the decision of the District Court that section 645 of the DOEOA incorporates all of section 9 of the FTC Act and provides subject matter jurisdiction for judicial enforcement of subpoenas issued pursuant to that section. *See United States v. Tesoro Petroleum Co.*, 503 F. Supp. 868 (D.D.C. 1980).

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[1] Appellant Juren has suggested 28 U.S.C. § 1331 (Supp. IV 1980) as a source of district court jurisdiction to enforce DOE subpoenas. Juren has failed to cite, and we have been unable to find, any cases construing the general grant of federal question jurisdiction as applying to petitions for enforcement of agency subpoenas. In the absence of any case law, we are unwilling to assume that § 1331, standing alone, would be sufficient to fill the gap in subpoena enforcement authority.

We also affirm the decision of the District Court that "the [DOE] inquiry is one being 'carried on' in this district for purposes of establishing jurisdiction." *United States v. Hill*, 525 F. Supp. at 623-24; *see Federal Election Commission v. Committee to Elect Lyndon La Rouche*, 613 F.2d 849 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980); *United States v. Stoltz*, 525 F. Supp. 617 (D.D.C. 1981). In addition, the District Court properly ruled that it had *in personam* jurisdiction over the respondents by operation of valid extraterritorial service of process. *See FTC v. Browning*, 435 F.2d 96 (D.C. Cir. 1970); FED. R. CIV. P. 4(f).

Finally, we decline to pass upon the appellants' remaining arguments regarding the burdensomeness and the purpose of the subpoenas. The Temporary Emergency Court of Appeals has exclusive jurisdiction over all issues adjudicated by the district courts arising under the Economic Stabilization Act and the Emergency Petroleum Allocation Act ("EPAA"). 12 U.S.C. § 1904 note (1976); 15 U.S.C. § 754(a) (1976); *see Texaco Inc. v. DOE*, 616 F.2d 1193 (Temp. Emer. Ct. App. 1979); *Coastal States Marketing, Inc. v. New England Petroleum Corp.*, 604 F.2d 179 (2d Cir. 1979). The subpoenas that are contested in these cases were issued in order to investigate compliance with regulations promulgated under the EPAA. Unlike the District Court's jurisdiction under section 645 of the DOEOA, the burden created by and the purpose of these subpoenas are therefore EPAA issues over which the Temporary Emergency Court of Appeals has exclusive jurisdiction. *See United States v. Wickland*, 619 F.2d 75, 78 (Temp. Emer. Ct. App. 1980).

For the foregoing reasons, it is ORDERED and ADJUDGED by this court that the holdings of the District Court in these three cases with respect to subject matter jurisdiction, *in personam* jurisdiction and venue under Section 645 of the Department of Energy Organiza-

tion Act, 42 U.S.C. § 7255 (Supp. IV 1980), are AFFIRMED; it is FURTHER ORDERED that appellee's motions to dismiss for want of appellate jurisdiction are DENIED with respect to the interpretation and application of section 645 of the Department of Energy Organization Act and are GRANTED with respect to all other issues.

Per Curiam
For the Court

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

## APPENDIX C

## UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

September Term, 1981

Misc. No. 82-00015

No. 82-1204

UNITED STATES OF AMERICA

v.

DENNIS JUREN, APPELLANT

And Consolidated Case No. 81-1205

[Filed Oct. 5, 1982]

Before: WALD and EDWARDS, Circuit Judges; JAMESON,* Senior Judge for the District of Montana

### ORDER

On consideration of appellants' petition for rehearing and of the response thereto, it is

ORDERED by the Court that the petition for rehearing is granted and it is

FURTHER ORDERED by the Court that the order of July 13, 1982 be, and the same hereby is, vacated.

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* Sitting by designation pursuant to Title 28 U.S.C. § 294(d).

These cases will now be decided by the panel on the basis of the written submissions already made without further oral argument. A new decision will issue at some future date.

*Per Curiam*
For the Court

GEORGE A. FISHER
Clerk

By: /s/ Daniel M. Cathey
DANIEL M. CATHEY
First Deputy Clerk

## APPENDIX D

## UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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September Term, 1981

Misc. No. 82-00015

No. 82-1204

UNITED STATES OF AMERICA

v.

DENNIS JUREN, APPELLANT

[Filed Mar. 25, 1982]

Before: TAMM and GINSBURG, Circuit Judges

### ORDER

On consideration of appellant's emergency motion for stay pending appeal, appellee's opposition to the motion, and appellant's reply to the opposition, it is

ORDERED by the Court that the motion for stay is granted. It is

FURTHER ORDERED by the Court, *sua sponte*, that this case be expedited. The following briefing schedule shall apply:

Appellant's brief—April 16,1982

Appellee's brief—May 3, 1982

Appellant's reply brief—May 10, 1982

Briefs shall be personally served and shall be filed in the Clerk's office no later than 4 p.m. on the indicated dates. No extensions of time will be granted. The Clerk is directed to schedule argument during the next open sitting period of the Court, May 13-June 9, 1982. The Clerk is further directed to schedule this case to be argued on the same day and before the same panel as No. 81-2171 *United States* v. *Hill*, and No. 82-1205, *United States* v. *Cromey*.

*Per Curiam*

For The Court

GEORGE A. FISHER
Clerk

By: /s/ Daniel M. Cathey
DANIEL M. CATHEY
First Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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September Term, 1981

Misc. No. 82-00016

No. 82-1205

UNITED STATES OF AMERICA

v.

EDWARD W. CROMEY, APPELLANT

[Filed Mar. 25, 1982]

Before: TAMM and GINSBURG, Circuit Judges

ORDER

On consideration of the appellant's emergency motion for stay of order and appellee's opposition to the motion, it is

ORDERED by the Court that the motion for stay is granted. It is

FURTHER ORDERED by the Court, *sua sponte*, that this case be expedited. The following briefing schedule shall apply:

Appellant's brief—April 16, 1982

Appellee's brief—May 3, 1982

Appellant's reply brief—May 10, 1982

Briefs shall be personally served and shall be filed in the Clerk's office no later than 4 p.m. on the indicated dates. No extensions of time will be granted. The Clerk is di-

rected to schedule argument during the next open sitting period of the Court, May 13-June 9, 1982. The Clerk is further directed to schedule this case to be argued on the same day and before the same panel as No. 81-2171, *United States* v. *Hill*, and No. 82-1204, *United States* v. *Juren*.

*Per Curiam*

For the Court

GEORGE A. FISHER
Clerk

By: /s/ Daniel M. Cathey
DANIEL M. CATHEY
First Deputy Clerk

## APPENDIX E

## EXCERPT FROM TRANSCRIPT OF DISTRICT COURT HEARING BEFORE JUDGE GESELL, February 16, 1982

* * * *

[41] MR. NELSON: But in the meantime it will be a lot of harm to our clients.

THE COURT: Well, I suppose that's true in a way.

MR. NELSON: And in a very brief—

THE COURT: But the agency must realize—that's one reason I have some regard for the affidavit in spite of what Mr. Montgomery said because if these are affidavits written—tricky affidavits written to gloss over what's really going on, they'll never succeed in their criminal reference. There won't be a Judge as I know in the Federal Court that wouldn't throw them out.

MR. NELSON: Your Honor, with just a few hours' discovery we can find out whether this is or not.

THE COURT: Well, I have your point.

MR. NELSON: Thank you, Your Honor.

MR. LEHMAN: No further argument.

THE COURT: I don't want what I'm about to say to suggest that I do not have deep sympathy for the position confronting both these gentlemen, Mr. Cromey and Mr. Juren.

I believe the Court has jurisdiction. I believe Judge Joyce Green's well reasoned opinion in United States versus Tesoro Petroleum Corporation which appears at 503 Fed. Supp., 868 correctly states the law and I intend to follow it.

As far as the—there really isn't any question of [42] either subject matter having in personam jurisdiction.

The suggestion that the Court direct discovery into the motives and purposes of the agency is going to be rejected. This is a summary proceeding. I do not believe that any extraordinary circumstances have been shown that are different than those confronting other members of the public dealing with agencies that have criminal reference authority, and I accept the statements in the affidavit that no criminal referral has been made and no decision has been made to refer. The inquiry relates to the enforcement of regulations. This is not the time to test the wisdom or the validity of those—or the meaning of those regulations and therefore I think clearly the inquiry is lawful.

So I'm going to enforce the subpoena in both cases. You may submit an Order scheduling each of those men in for the second week of March at a time certain. You'll have to tender them their expenses and so forth. I'd like to have that Order in hand today in case these gentlemen wish to seek a review of the matter in the Court of Appeals and if we get it signed now there will be plenty of time to go up to the Court of Appeals if that's what you wish to do before any appearance would be necessary here.

(Whereupon, the proceedings in the above-entitled matter were concluded at 11:15 A.M.)

## APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Misc. No. 82-0015

UNITED STATES OF AMERICA, PETITIONER

v.

DENNIS JUREN, RESPONDENT

[Filed Feb. 17, 1982]

### ORDER

Upon consideration of the arguments presented by counsel at the February 16, 1982 hearing held in this action, the pleadings of the parties, and the entire record herein, it is this 16th day of February, 1982,

ORDERED that Dennis Juren obey fully the Department of Energy subpoena of July 17, 1981, and appear to testify to the matters set forth therein at Washington, D.C., on the 11th day of March, 1982, and it is

FURTHER ORDERED that respondent's Motion For Leave To Conduct Discovery is denied.

/s/ Garland A. Gesell
United States District Judge

# UNITED STATES DISTRICT COURT
# FOR THE DISTRICT OF COLUMBIA

Misc. No. 82-0016

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD W. CROMEY, RESPONDENT

[Filed Feb. 17, 1982]

## ORDER

Upon consideration of the arguments presented by counsel at the February 16, 1982 hearing held in this action, the pleadings of the parties, and the entire record herein, it is this 16th day of February, 1982,

ORDERED that Edward W. Cromey obey fully the Department of Energy subpoena of July 17, 1981, and appear to testify to the matters set forth therein at Washington, D.C., on the 12th day of March, 1982, and it is

FURTHER ORDERED that respondent's Motion To Permit Limited Discovery is denied.

/s/ Garland A. Gesell
United States District Judge

## APPENDIX G

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-0015

UNITED STATES OF AMERICA, PETITIONER

v.

DENNIS JUREN, RESPONDENT

## ORDER

Upon consideration of the motion of respondent for stay of enforcement order pending appeal and the entire record herein, it is hereby

ORDERED that respondent's motion for stay pending appeal is denied.

/s/ Garland A. Gesell
United States District Judge

March 2, 1982.

## APPENDIX H

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Misc. No. 82-0015

UNITED STATES OF AMERICA, PETITIONER

v.

DENNIS JUREN, RESPONDENT

[Filed Mar. 8, 1982]

## ORDER

Upon consideration of petitioner's Motion To Amend An Order, and the entire record herein, it is this 8th day of March, 1982,

ORDERED that petitioner's Motion is granted; and it is

FURTHER ORDERED that the Court's Order issued February 17, 1982, be amended to read:

> ORDERED that Dennis Juren obey fully the Department of Energy subpoena of July 17, 1981 and appear to testify to the matters set forth therein at Washington, D.C., on the 17th day of March, 1982, and it is

/s/ June Green
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Misc. No. 82-0016

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD W. CROMEY, RESPONDENT

[Filed Mar. 8, 1982]

ORDER

Upon consideration of petitioner's Motion To Amend An Order, and the entire record herein, it is this 8th day of March, 1982,

ORDERED that petitioner's Motion is granted; and it is

FURTHER ORDERED that the Court's Order issued February 17, 1982, be amended to read:

> ORDERED that Edward M. Cromey obey fully the Department of Energy subpoena of July 17, 1981 and appear to testify to the matters set forth therein at Washington, D.C. on the 18th day of March, 1982, and it is

/s/ June Green
United States District Judge

## APPENDIX I

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-0015

UNITED STATES OF AMERICA, PETITIONER

v.

DENNIS JUREN, RESPONDENT

[Filed Mar. 18, 1982]

### ORDER

Upon consideration of respondent's Motion to Amend an Order, and the entire record herein, it is this 17th day of March, 1982,

ORDERED that respondent's Motion is granted; and it is

FURTHER ORDERED that the Court's Order issued February 17, 1982, be amended to read:

> ORDERED that Dennis Juren obey fully the Department of Energy subpoena of July 17, 1981 and appear to testify to the matters set forth therein at Washington, D.C., on the 2nd day of April, 1982.

/s/ June Green
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-0015

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD W. CROMEY, RESPONDENT

[Filed Mar. 18, 1982]

ORDER

Upon consideration of petitioner's Motion To Amend An Order, and the entire record herein, it is this 17th day of March, 1982,

ORDERED that petitioner's Motion is granted; and it is

FURTHER ORDERED that the Court's Order issued February 17, 1982, and amended on March 8, 1982, be amended to read:

> ORDERED that Edward M. Cromey obey fully the Department of Energy subpoena of July 17, 1981 and appear to testify to the matters set forth therein at Washington, D.C. on the 1st day of April, 1982.

/s/ June Green
United States District Judge

## APPENDIX J

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Misc. No. 82-0015

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

DENNIS JUREN, RESPONDENT-APPELLANT

Misc. No. 82-0016

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

EDWARD W. CROMEY, RESPONDENT-APPELLANT

[Filed Jun. 3, 1982]

## ORDER

This matter is before the court upon motions for a rehearing filed by the respondents Dennis Juren and Edward W. Cromey pursuant to Rule 60(b) of the Federal Rules of Civil Procedure on the ground of newly-discovered evidence.

The respondents' claim that they have recently discovered a document from the files of the Petitioner which indicates that the government intends to use the proposed depositions of the respondents for an improper purpose, namely, to build a criminal case against them.

The court has read the record in this case including the transcript of the proceeding before Judge Gesell on February 16, 1982, the motions and attached affidavits filed by the respondents and the affidavits of Jeffrey R.

Whieldon and Gloria R. Sulton executed on May 20, 1982.

The document recently unearthed by the respondents which was written in March, 1979, refers to a Tesoro/Young investigation and concerns a meeting of March 12, 1979, with certain representatives of the Department of Energy and the Department of Justice. The memorandum appears to indicate that no decision had been made to refer that matter of the Department of Justice.

The May 20, 1982, affidavits of Whieldon and Sulton state that in any event, it was decided to close that particular Tesoro/Young investigation.

The Whieldon and Sulton affidavits further assert that the aforesaid Tesoro/Young investigation involved different facts and was conducted separately from the investigation in which the subpoenas in the present case were issued.

In view of the foregoing, the respondents' motions for a new hearing are denied.

/s/ Judge Flannery
United States District Judge

## APPENDIX K

## TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

No. DC-88

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

DENNIS JUREN, RESPONDENT-APPELLANT

No. DC-89

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

EDWARD W. CROMEY, RESPONDENT-APPELLANT

Before WRIGHT, Chief Judge, and HOFFMAN and MAXWELL, Judges.

### JUDGMENT

These causes came to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel.

In consideration whereof, IT IS ORDERED that the judgment of the District Court is affirmed.

FOR THE COURT:

DONNA M. BOLD
Clerk

by: /s/ Stephen M. Mancuso
STEPHEN M. MANCUSO
Deputy Clerk

September 9, 1982

## APPENDIX L

## TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

No. DC-88

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

DENNIS JUREN, RESPONDENT-APPELLANT

No. DC-89

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

EDWARD W. CROMEY, RESPONDENT-APPELLANT

Before WRIGHT, Chief Judge, and HOFFMAN and MAXWELL, Judges.

ORDER

Upon consideration of the Petition for Rehearing filed by Appellants (Juren and Cromey),

IT IS HEREBY ORDERED that said petition is DENIED.

IT IS FURTHER ORDERED that the mandate shall issue forthwith.

FOR THE COURT:

DONNA M. BOLD
Clerk

by: /s/ Stephen M. Mancuso
STEPHEN M. MANCUSO
Deputy Clerk

September 28, 1982

# TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

No. DC-88

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

DENNIS JUREN, RESPONDENT-APPELLANT

No. DC-89

UNITED STATES OF AMERICA, PETITIONER-APPELLEE

v.

EDWARD W. CROMEY, RESPONDENT-APPELLANT

Before WRIGHT, Chief Judge, and HOFFMAN and MAXWELL, Judges.

## ORDER

Upon consideration of the Suggestion for Rehearing *en banc* filed by Appellants (Juren and Cromey),

IT IS HEREBY ORDERED that said suggestion is DENIED.

FOR THE COURT:

DONNA M. BOLD
Clerk

by: /s/ Stephen M. Mancuso
STEPHEN M. MANCUSO
Deputy Clerk

October 6, 1982

## APPENDIX M

MEMORANDUM FOR THE FILE

FROM: Gloria Sulton
Assistant Solicitor
Office of Special Counsel

SUBJECT: Tesoro/Young Investigation
Meeting With Richard Fishkin, DOJ,
March 12, 1979, at DOJ

Present at the meeting were:

Jeffrey Whieldon and Gloria Sulton, OSC
Jerry Weiner, Alan Hechtkoph, OGC
Robert Gossin, Stan Mills and Beverly Fischetti,
Office of Enforcement
Dick Sauber, DOJ, Fraud Section

This meeting was arranged by Weiner with Wheildon's [sic] concurrence following a meeting on March 6, 1979, between OSC, OGC and OE personnel involved in the Young Entitlements "cluster" case. The purpose of the meeting was to informally brief Fishkin on the facts of the case and discuss with him additional steps to put the case in a posture for referral. Since this is the most fully developed case of approximately 18 "cluster" audits involving the Entitlement Program, it was felt that a discussion with Fishkin would be helpful for this case as well as those still under investigation.

Fischetti briefly outlined the case. Fishkin interjected questions. He was interested in what Tesoro did with the refined product and how they were priced; where jurisdiction of the case lay; potential problems with prosecu-

tion. The discussion was open and both legal and factual problems were covered.

The last question to be answered was the nature and extent of further work by DOE before referral to DOJ. It was agreed that depositions of Key persons should be taken before a referral is made. OSC and OGC will work together in issuing subpoenas and scheduling the taking of testimony.

## APPENDIX N

EXHIBIT 1

Misc. A. No. 82-R-6

[SEAL]

DEPARTMENT OF ENERGY
Washington, D.C. 20461

SUBPOENA

TO: Dennis Juren

AT: TESORO PETROLEUM COMPANY
8700 Tesoro Drive
San Antonio, Texas 78266

YOU ARE HEREBY REQUIRED to appear before Thom Sacco and/or Gloria R. Sulton, or their designees, officers of the U.S. Department of Energy, at 10:00 a.m. on Friday, August 7, 1981, at 12th & Pennsylvania Avenue, Room 3109, Washington, D.C. 20461. The purpose of your appearace is to testify in the investigation by the Department of Energy to determine the compliance of Arizona Fuels Corporation, Demenno Resources, Inc., Goldking Refinery, Ltd., Hill Petroleum, Inc., J&W Refining, Inc., Kenco Refining, Kern County Refining, Inc., Pioneer Refining, Inc., Refinery Associates, Inc., Refinery Development, Inc., San Joaquin Refining, Inc., The Tipperary Corporation, and Tesoro Petroleum Corporation, with the Mandatory Petroleum Price and Allocation Regulations, 10 C.F.R. Parts 205, 210, 211 and 212. This investigation concerns purchases, sales, exchanges and processing of certain volumes of crude oil and the purchases, sales and exchanges of its refined products during the period September 1976 through December 1977.

FAILURE TO OBEY THIS SUBPOENA WILL RESULT IN REFERRAL TO A UNITED STATES DISTRICT COURT FOR ENFORCEMENT.

Issued this 17th day of July 1981, under the authority of § 206 of the Economic Stabilization Act of 1970, as amended, incorporated by § 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, amended; § 13(e)(1) of the Federal Energy Administration Act of 1974; §§ 301, 645 and 705 of the Department of Energy Organization Act and 10 C.F.R. §§ 205.8 and 205.201(a) and (b).

Signature: /s/ Jeffrey R. Whieldon
JEFFREY R. WHIELDON
Deputy Solicitor
Office of Special Counsel

[SEAL]

DEPARTMENT OF ENERGY
Washington, D.C. 20461

SUBPOENA

TO: Edward W. Cromey

AT: TESORO PETROLEUM CORPORATION
8700 Tesoro Drive
San Antonio, Texas 78266

YOU ARE HEREBY REQUIRED to appear before Thom Sacco and/or Gloria R. Sulton, or their designees, officers of the U.S. Department of Energy, at 10:00 a.m. on Wednesday, August 5, 1981, at 12th & Pennsylvania Avenue, Room 3109, Washington, D.C. 20461. The purpose of your appearance is to testify in the investigation by the Department of Energy to determine the compliance of Arizona Fuels Corporation, Demenno Resources, Inc., Goldking Refinery, Ltd., Hill Petroleum, Inc., J&W Refining, Inc., Kenco Refining, Kern County Refining, Inc., Pioneer Refining, Inc., Refinery Associates, Inc., Refinery Development, Inc., San Joaquin Refining, Inc., The Tipperary Corporation, and Tesoro Petroleum Corporation, with the Mandatory Petroleum Price and Allocation Regulations, 10 C.F.R. Parts 205, 210, 211 and 212. This investigation concerns purchases, sales, exchanges and processing of certain volumes of crude oil and the purchases, sales and exchanges of its refined products during the period September 1976 through December 1977.

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Signature: /s/ Jeffrey R. Whieldon
JEFFREY R. WHIELDON
Deputy Solicitor
Office of Special Counsel

## APPENDIX O

## STATUTORY PROVISIONS INVOLVED

12 U.S.C. 1904 note (Economic Stabilization Act)

Section 206. Subpena [sic] power

The head of an agency exercising authority under this title, or his duly authorized agent, shall have the authority, for any purpose related to this title, to sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of refusal to obey a subpena served upon any person under the provisions of this section, the head of the agency authorizing such subpena, or his delegate, may request the Attorney General to seek the aid of the district court of the United States for any district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce documents before the agency.

15 U.S.C. 754 (Emergency Petroleum Allocation Act)

(a)(1) Except as provided in paragraph (2), (A) sections 205 through 207 and sections 209 through 211 of the Economic Stabilization Act of 1970 (as in effect on November 27, 1973) shall apply to the regulation promulgated under section 753(a) of this title, to any order under this chapter, and to any action taken by the President (or his delegate) under this chapter, as if such regulation had been promulgated, such order had been issued, or such action had been taken under the Economic Stabilization Act of 1970; and (B) section 212 (other than 212(b)) and 213 of such Act shall apply to functions under this chapter to the same extent such sections apply to functions under the Economic Stabilization Act of 1970.